

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 7298**

**BILL NUMBER: SB 215**

**NOTE PREPARED:** Apr 12, 2011

**BILL AMENDED:** April 11, 2011

**SUBJECT:** Forfeiture.

**FIRST AUTHOR:** Sen. Bray

**FIRST SPONSOR:** Rep. Foley

**BILL STATUS:** 2nd Reading - 2nd House

**FUNDS AFFECTED:** \_\_\_GENERAL  
**X** DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

- A. *New Funds Created* – It requires counties to create a County Offender Fund, an Asset Forfeiture Account, and a County School Security Fund. It provides that, in a forfeiture proceeding, 1/3 of the proceeds may be provided to the prosecuting attorney or an attorney retained by the prosecuting attorney in a forfeiture action. It provides that of the remaining proceeds, 5% of the proceeds shall be provided to a county's County Offender Fund, 12% of the proceeds shall be provided to the County School Security Fund, and 83% of the proceeds shall be distributed to an account for distribution to law enforcement agencies participating in the seizure.
- B. *County Legislative Body Oversight* – It specifies that money or the proceeds of seized property placed in a county asset forfeiture account may be disbursed only by action of the county legislative body under a claim submitted by a law enforcement agency or prosecuting attorney, and must be disbursed pursuant to an interlocal agreement, if applicable.
- C. *Retaining an Attorney for Asset Forfeitures* – It permits a prosecuting attorney to retain an attorney to bring a forfeiture action only if the Attorney General reviews the compensation agreement between the prosecuting attorney and the retained attorney, and requires that the compensation agreement with the attorney be capped at: (1) 33 1/3% of the first \$10,000; (2) 25% of the amount between \$10,000 and \$100,000; and (3) 20% of the amount that is at least \$100,000; unless a court finds that the forfeiture action is unusually complex.
- D. *State Police as a Party in an Asset Seizure* – It provides that the Indiana State Police may make a motion that certain seized property must be transferred to the appropriate federal authority.
- E. *Other Forfeiture Provisions* – It requires a court to notify the Indiana Criminal Justice Institute of the amount and manner of a forfeiture distribution. It provides that a deputy prosecuting attorney

who engages in a forfeiture action for the prosecuting attorney's office may not receive a contingency fee.

**Effective Date:** July 1, 2011.

**Explanation of State Expenditures:**

**Explanation of State Revenues:** (Revised) *State Police as a Party in an Asset Seizure* – This provision would permit the State Police to make a motion in a civil forfeiture case to transfer a case to federal court to determine how proceeds in asset forfeiture cases would be awarded among the agencies who participated in the seizure. If the case is transferred to federal court, then 20% of the value of the asset is likely to be retained at the federal level and 80% will be divided between the state and local units who were involved in the seizure. If the case is decided in Indiana's trial courts, the money would be divided in the manner described in the following table. The State Police report that in 2009, it seized \$4.7 M for forfeiture.

Revenue Loss to the Common School Fund – The bill will redirect proceeds of money and property sales that currently are deposited into either the state or local general fund to pay for the cost of the law enforcement activity. Currently, any remaining money after reimbursing state or local law enforcement agency expenses is deposited into the Common School Fund. As proposed, all money seized would be retained at the local level. No money from these seized assets would be deposited in the state Common School Fund.

LSA found limited information on asset seizures to estimate what the revenue loss to the Common School Fund would be. As background, the State Auditor's data system reports that the Common School Fund received \$102,472 from controlled substance seizures in FY 2010. The amount retained by local law enforcement agencies was not known. This revenue would be redirected to a County Asset Forfeiture Account. From the County Asset Forfeiture Fund, 1/3 of the money would be transferred to the prosecuting attorney's office. Of the balance, 12% would be deposited into the School Security Fund, 5% would be deposited into the County Offender Fund, and the remaining 83% would be distributed to the county auditor for distribution to law enforcement agencies as directed by the court.

LSA used 13 forfeiture cases that were reported by the Wayne County Sheriff to the State Treasurer and the amount of money that was divided between the local law enforcement agencies and prosecuting attorney and the Common School Fund.

The following table shows the reported distributions for each case and what the distribution would be under this proposed formula.

Case No.	Current Law		Proposed Changes				Total Value of Asset
	Law Enforcement Costs	Common School Fund	Prosecuting Attorney	School Security Fund	County Offender Fund	Law Enforcement Agencies	
0712-MI-036	\$2,145	\$13,821	\$5,317	\$1,278	\$532	\$8,839	\$15,966
0806-MI-013	\$343	\$5,277	\$4,777	\$101	\$42	\$700	\$5,620
0908-MI-013	\$1,346	\$2,645	\$3,392	\$72	\$30	\$497	\$3,991
0806-MI-012	\$921	\$2,080	\$2,551	\$54	\$23	\$373	\$3,001
0610-MI-021	\$426	\$2,099	\$2,146	\$45	\$19	\$315	\$2,525
0704-MI-008	\$1,983	\$340	\$1,974	\$42	\$17	\$289	\$2,323
0606-MI-011	\$629	\$1,632	\$1,922	\$41	\$17	\$281	\$2,261
0804-MI-022	\$1,132	\$879	\$1,709	\$36	\$15	\$251	\$2,011
0612-MI-024	\$1,000	\$922	\$1,634	\$35	\$14	\$239	\$1,922
0811-MI-001	\$478	\$1,439	\$1,629	\$35	\$14	\$239	\$1,917
0811-MI-026	\$573	\$1,048	\$1,378	\$29	\$12	\$202	\$1,621
0704-MI-030	\$590	\$690	\$1,088	\$23	\$10	\$159	\$1,280
0611-MI-024	\$498	\$455	\$810	\$17	\$7	\$119	\$953
<b>Totals</b>	<b>\$12,063</b>	<b>\$33,328</b>	<b>\$30,328</b>	<b>\$1,808</b>	<b>\$752</b>	<b>\$12,503</b>	<b>\$45,391</b>

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** See *State Explanation of State Revenues*.

**State Agencies Affected:** Office of the State Treasurer; Criminal Justice Institute

**Local Agencies Affected:** Local law enforcement agencies; Prosecuting attorneys.

**Information Sources:** Paul Ogden, Attorney at Law; Steve Johnson, Prosecuting Attorneys Council; State Treasurer; 2009 Indiana State Police Annual Report

**Fiscal Analyst:** Mark Goodpaster, 317-232-9852.